

Consumer Protection Act, 2019 – Key Highlights

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Abstract

With the rise of digitalization and E-commerce platform, the Consumer Protection Act, 1986 contain many flaws to work in the synchrony with consumer protection in the present scenario, where new kind of issues are arising with the use of modern facilities like multi-level marketing, direct selling, teleshopping, and online sale, etc. To enhance consumer protection Government of India has enacted a new law i.e. the Consumer Protection Act, 2019 as important measures to deal with lacunae in the 1986 Act. New Act is framed to ease the procedures involves in providing basic rights to the consumer, Hence the 2019 Act can be seen as a new Milestone in Empowering Consumer. Here, the author explains the key point of the Consumer Protection Act, 2019, compared with the 1986 Act and explains its importance over the 1986 Act.

KEYWORDS: Consumer Protection, E-Commerce, Unfair Trade Practice, Misleading Advertisement, Product Liability

“A customer is the most important visitor on our premises. He is not dependent on us. We are dependent on him. He is not an interruption in our work. He is the purpose of it. He is not an outsider in our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us an opportunity to do so”

- Mahatma Gandhi

In today’s world majority of the consumer is using digital technologies to put forward their concerns about public services, companies, and product/services etc and it is predicted that in India approximately 339 million citizens will buy products from online platforms, which accounts for 70 % of mobile internet users that will shop online.¹ As digitalization has its own advantage such as it offers a variety of choices, easy payment, better services, and shopping as per the convenience, on the other hand, digitalization has also given rise to many troubles such as credit card cloning, ATM card skimming, online frauds, identity theft, etc.²

So all this necessitated a close look at consumer protection in the digital age, identify problem areas, and come up with solutions that are in line with the modern day’s concept

¹ “E-commerce in India - statistics & facts | Statista,” available at: <https://www.statista.com/topics/2454/e-commerce-in-india/> (last visited February 27, 2021).

²Sheetal Kapoor, “Consumer Protection Act, 2019: A New Milestone in Empowering Consumers” *YOJANA* 53 (2019). available at: https://www.researchgate.net/publication/343399260_Consumer_Protection_Act_2019_A_New_Milestone_in_Empowering_Consumers (last visited on February 10, 2021)

of consumer protection. Hence, on 6th August 2019, the landmark Consumer Protection Bill, 2019 was passed by the Indian Parliament, to replace the three-decade-old Consumer Protection Act, 1986³ (hereinafter referred to as the “1986 Act”), and to resolve the consumer disputes in a fast and effective way on 09.08.2019, The President of India gave its consent to the Consumer Protection Act, 2019 (hereinafter referred to as the “2019 Act”)⁴ and its different sections came into force on 20th July 2020⁵ and 24th July 2020.⁶

The 2019 Act provides reforms in terms of administration and settlement of consumer disputes in India. It provides for strict penalties, including jail terms for adulteration and for misleading advertisements.⁷ More importantly, it now prescribes rules for the sale of goods through e-commerce. The consumer is now truly the king!

Following are the key provisions included in the 2019 Act:

Consumer: The 2019 Act define consumer comprehensively as it expands the definition of consumer, now it also includes consumer that uses e-commerce platform for purchasing goods or avails services. Hence, 2019 Act fills the gap present in 1986 Act by expanding the definition of consumer.⁸

Direct Selling: means “marketing, distribution and sale of goods or provision of services through a network of sellers, other than through a permanent retail location”.⁹

Unfair Contract: The unfair contract is also introduced in the 2019 Act, in which all those contracts are included which benefits service provider or producer but they are not in favor of the consumer, for example in some contracts consumer is bound to pay the high-security deposit as it is fulfilling the requirement of the contract; If consumer breaches the contract then he is supposed to pay the heavy penalty which is higher to the actual amount of loss that occurs to the other party; refusal to consider early repayment of debts on payments where the penalty is applicable; In the absence of reasonable cause also the party is allowed to end the contract unilaterally; Allows the party to alter the

³“Landmark Consumer Protection Bill, 2019 gets Parliamentary approval,.” *available at:* <https://pib.gov.in/newsite/PrintRelease.aspx?relid=192499> (last visited on February 15, 2021)

⁴Consumer Protection Act, 2019 (Act 35 of 2019). *available at:* <http://egazette.nic.in/WriteReadData/2019/210422.pdf> (last visited on February 18,2021)

⁵“The Consumer Protection | Department of Consumer Affairs | Ministry of Consumer Affairs Food and Public Distribution | Government of India,.” *available at:* <https://consumeraffairs.nic.in/sites/default/files/Act%20into%20force.pdf> (last visited on February 17, 2021)

⁶“The Consumer Protection | Department of Consumer Affairs | Ministry of Consumer Affairs Food and Public Distribution | Government of India,.” *available at:* <https://consumeraffairs.nic.in/sites/default/files/Provisions%20of%20Act%20comes%20into%20force.pdf> (last visited on February 17, 2021)

⁷“New Consumer Protection law in India: A Simple Overview (Seller Beware!) - Lexology,.” *available at:* <https://www.lexology.com/library/detail.aspx?g=4c180f5c-b6d6-417a-ab22-6275d0d5c0f9> (last visited February 3, 2021).

⁸ *Supra* note 4, s.2, cl. 7

⁹ *Id.*, s.2, cl. 13

contract even without the consent of consumer in such way that harms the consumer; Made the consumer pay charges that are not reasonable or put the consumer in unfavorable condition. All such unfair contracts to the consumer are included in the 2019 Act and a consumer is eligible to file a complaint in such cases. This step will prove to be an important measure to put check on businesses such as banks and e-commerce platforms, where they compel the consumer to accept such contract or standard terms before availing their services or buying their goods. Due to their prominent dominance in the market, they can take such an advantage over the consumer.¹⁰

Unfair Trade Practices: The definition of Unfair trade Practices is expanded in the 2019 Act when compared to the 1986 Act, as it now covers online misleading advertisement; the malpractice of not giving memo or issuing bills for the goods and services; denying to return defective goods, or to terminate defective services and failing to refund the money within the time limit mentioned in bill or memo or within 30 days, in case such time limit is not mentioned in the bill or memo and disclosing consumers personal data unless it is included in provisions of any other law.¹¹

Covers E-Commerce Transactions: In the 2019 Act, the definition of E-commerce includes both offline and online transactions that are done via electronic means or direct selling by teleshopping or multi-level marketing. The 1986 Act did not mention e-commerce transactions and this issue is now been addressed in the 2019 Act.¹²

E-Filing of Complaints: The 2019 Act also provides flexibility to the consumer to file complaints electronically via an Initiative named as E-Daakhil by the Department of Consumer Affairs under the Ministry of Consumer Affairs, Food and Public Distribution.¹³ To make the procedure convenient for the consumer, the consumer is allowed to participate in hearing via video-conferencing.

Misleading Advertisement: “In relation to any product or service, means an advertisement, which-

(i) Falsely describes such product or service; or

(ii) Gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity, or quality of such product or service; or

(iii) Conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or (iv) Deliberately conceals important information”¹⁴

¹⁰ *Id.*, s.46

¹¹ *Id.*, s.47

¹² *Id.*, s.2, cl.16

¹³ “Consumer Commission E-Filing Application” available at: <https://edaakhil.nic.in/edaakhil/faces/index.xhtml> (last visited February 3, 2021).

¹⁴ *Supra* note 4, s.2, cl. 28

Mediation: Another Provision introduced for “mediation” as an Alternate Dispute Resolution (ADR) mechanism which aims at giving a legislative basis to the resolution of consumer disputes through mediation, thus making the process less cumbersome, simple, and quicker.¹⁵ To fulfill this objective, The 2019 Act includes the formation of a mediation cell in each District Commissions, State Commissions, National Commission, and each of the regional benches, which will have mediators for its functioning. The Mediators can assist the parties to reach the settlement in full/part. Accordingly, based on the report of mediators as to settlement reached by the parties, relevant orders will be passed by the consumer disputes redressal commission.¹⁶

Establishment of Central Consumer Protection Authority: In the 2019 Act, provisions are made to establish the regulatory authority named as the Central Consumer Protection Authority (CCPA), which is vested with the powers of enforcement. For conducting the investigation, the CCPA is having an Investigation wing, which is headed by Director-General.¹⁷

Composition: It consists of a Chief Commissioner and number of other Commissioners. It will be located in National Capital Region of Delhi and will also have regional and other offices.

Powers and Functions:-

General Powers:-

- a) To enforce regulation in matters related to violation of rights of consumers, To promote and protect consumer rights ;
- b) To take essential measures to reduce unfair trade practices and to ensure that people stop engaging themselves in unfair trade practices;
- c) To regulate the false or misleading advertisements about goods or services and also ensure that people stop publication of false or misleading advertisements.

Power to Investigate:-

- It can investigate or inquire by itself if required;
- it can investigate on any complaint that is received to them;

¹⁵Shipra Singh, “consumer protection act 2019: Here’s how consumers will benefit under the new Consumer Protection Act.” *The Economic Times*, available at: <https://economictimes.indiatimes.com/wealth/spend/heres-how-consumers-will-benefit-under-the-new-consumer-protection-act/articleshw/70711304.cms> (last visited on February 16, 2021)

¹⁶*Supra* note 4, s.74-83

¹⁷Gaurang Kanth, Divjot Singh Bhatia, “The Consumer Protection Act, 2019: An Overview - Consumer Protection - India” *Mondaq* (2020) available at: <https://www.mondaq.com/india/Consumer-Protection/876600/The-Consumer-Protection-Act-2019-An-Overview> (last visited on February 12, 2021)

- They can also investigate on the matter in which they are directed by the Central Government.¹⁸

Power to refer the matter for Investigation: It can refer the matter for investigation to Director-General or by the District Collector.¹⁹

Power to Issue Directions/ Penalties: It can impose a penalty of up to 10 lakhs. For subsequent contravention, up to 50 lakhs False or misleading advertisement.²⁰

Investigation Wing: Central Authority will have an investigation wing, which will be headed by Director-General. This wing is made for inquiry and investigation purposes, once the investigation is done, it shall be submitted to Central Authority.²¹ Further Central Authority may refer to the District collector to further inquire/investigate this matter and submit the report.²²

Appeal: The CCPA's appeal shall be submitted with the National Commission within thirty days of the date of receipt of that order.

Composition Consumer Protection councils²³

Central Council	State Council	District Council
Chairperson: The minister-in-charge of the Department of Consumer Affairs in Central Government. Such number of other authority or non-official individuals addressing such interests as might be recommended	Chairperson: The minister-in-charge of the Department of Consumer Affairs in State Government. Such number of other authority or non-official individuals addressing such interests as might be recommended (not exceed ten)	Chairperson: The Collector of the district Such number of other authority or non-official individuals addressing such interests as might be recommended

Consumer Disputes Redressal Commission: As far as the Consumer Redressal Forums are concerned, certain key changes are made in the 2019 Act such as:-

Territorial Jurisdiction: The 2019 Act includes provisions that enable the consumer to file complaints at a consumer forum located at the place of residence or where that consumer works, which makes it easy for the consumer to access the consumer forum as the place of purchase or seller office may not be located in their state. This was a

¹⁸Supra note 4, s.18

¹⁹Id., s.17

²⁰Id., s. 21

²¹Id., s.15

²²Id., s.16

²³Id., s. 3-9

drawback in the 1986 Act, as in that act the consumer had to file the complaint at the place where that purchase was made or where the seller registered office is located.

Enhancement of Pecuniary Jurisdiction: The 2019 Act has revised pecuniary limits for the District, State, and National Commissions, respectively. In addition to this, the 2019 Act has also introduced a change in the factors for calculating pecuniary jurisdiction for filing the Complaint. The method for determining the pecuniary jurisdiction will be done based on the value of goods or services paid; on the other hand, the pecuniary jurisdiction in the 1986 Act was decided based on the value of goods and services along with the compensation claimed. Hence this would deter the practice of claiming heavy compensation and would bring such cases under the jurisdiction of the State or National Commission.²⁴

	District Commission	State commission	National commission
Composition	President: and not more than the number suggested by central government but not less than two.	President: and not more than the number suggested by central government but not less than four.	President: and not more than the number suggested by central government but not less than four
Jurisdiction	Value of goods or services paid: upto one crore rupees	From one crore to ten crore	More than ten crore
Appeal	District Commission to State commission within 45 days from the order of District Commission Fees shall be 50% of Pre-deposit (earlier 25,000 INR) No appeal applicable if the decision passed through mediation	State commission to National commission within 30 days from the order of State Commission Fees shall be 50% of Pre-deposit (earlier 35,000 INR) Ex-parte orders	To Supreme Court within 30 days from the order of National Commission Fees shall be 50% of Pre-deposit (earlier 50,000 INR) Ex-parte orders

²⁴ Dr. G. Nedumaran, D. Mehala, etc., “Consumer Protection Act 2019 – An Overview” *IX Mukta Shabd Journal* 1953–1959 (2020). available at: <http://shabdbooks.com/gallery/33-sep2020.pdf> (last visited on February 17, 2021)

Product Liability: In the 2019 Act the concept of Product liability is introduced, this concept id Product liability is also added under the new Act. The concept of product liability is based on the principle of “Caveat Venditor” i.e., it is the responsibility of the seller if consumers suffer any harm that is caused by any defective product or deficient services.²⁵

Against Whom:- complaint regarding product liability can be done against 1) a manufacturer of Product or 2) a service provider of product or 3) a seller of the product, as the case may be, for the harm suffered by the consumer due to a defective product.²⁶

Liability of product manufacturer: A product manufacturer of a product is liable in an action for product liability, if

- a) The product contains a production defect; or
- b) The product contains a flaw in design; or
- c) There are modifications from production specifications; or
- d) The item does not comply with the express warranty, or
- e) The substance does not provide appropriate directions for safe use to avoid injury or any warning about inappropriate or incorrect use.

Liability of product service provider: A service provider of a product is liable in an action for product liability, if -

- a) The service provider provided the imperfect service or the nature or manner of its performance was inadequate as per any law or any contract for the time being in force.
- b) The service provider has shown negligence or consciously hidden any information that has caused the harm
- c) The service provider have not shared proper guidelines or warnings to prevent any harm to the consumer
- d) The service did not comply with the express warranties or the contract terms and conditions

Liability of product sellers: A product seller who is not a manufacturer of a product is liable in an action for product liability, if -

- a) His considerable control over the design, test, production, packaging, or labeling of a product that has caused the damage; or
- b) He altered or changed the substance and the significant factor in causing the harm was such alteration or modification.; or
- c) The express warranty of a product was made independent of any express warranty made by the manufacturer and that product did not comply with the express warranty made by the seller of the product that caused the harm.
- d) If the seller sells a product whose manufacturer identity is not known, or if the identity is known but warrant cannot be effected on him or the service of notice or process is not applicable on him as he is not subject to the law in India or order passed if any or which is in force in India or the order, if any, enforced against him

²⁵ *Supra* note 4, s.82-87

²⁶ *Id.*, s.83

- e) If the seller failed to exercise fair caution in assembling, testing, or preserving such a product, or did not pass on the product manufacturer's alerts or guidance about the hazards involved or correct use of the product during the sale of such a product and such negligence was the cause of the damage.²⁷

Offences and penalties			
Section	Offence	Imprisonment	fine
88	Fails to comply with any direction of the Central Authority	6 months	20 lakhs
89	False or misleading advertisement	2 year	10 lakhs
90	Manufacturing, selling or storing or distributing or sale or import of adulterant-containing products <ul style="list-style-type: none"> • If no harm to the consumer • Causing injury not amounting to grievous hurt • Causing grievous hurt • Death of the consumer 	6 months 1 year 7 year Life Imprisonment	1 lakhs 3 lakhs 5 lakhs 10 lakhs

E-commerce guidelines would be mandatory under consumer protection law which would include a 14-day deadline to affect refund requests. These guidelines made it mandatory for e-trailers to show the information on the website about the goods and the services, which are supplied by the sellers, and also describe the process involved in resolving the complaints of the consumer. It also orders e-commerce companies to ensure the protection of consumer's personal information. It is mandated to display the terms of the contract that happened between the e-Commerce body and seller about the mode of payment, return, exchange, refund, guarantee/warranty, delivery, redressal mechanism for grievance, etc.

Conclusion: To conclude, the Consumer protection act 2019 provides better protection to the consumer when compared to the 1986 Act. As the new act is designed after taking into consideration of digitalization and online frauds happening in the current age. The 2019 Act allows the consumer to easily files complaints via an online portal. The 2019 Act has established Central Authority; this authority will assist in providing necessary intervention whenever a violation of consumer rights will happen. Central Authority has an investigation wing for investigating and conducting the inquiry in the assigned matters. Based on the requirement Central authority may refer the matter to the regulator for further process in that matter. As there is huge pendency of cases so the concept of mediation may help in faster disposal of the cases and hence settle most of the disputes. Another important concept added in the 2019 Act is Product liability makes sellers liable if consumers suffer harm due to defective products and deficient services. The Commission's pecuniary and territorial jurisdiction has also been increased, but the increased pecuniary jurisdiction of the district commission may overburden the district commission and may increase the pendency of cases. The new act also contains definitions about e-commerce, misleading advertisement, unfair contract.

Hence it can be said that the 2019 act is an important step toward reformation, enhancement in the protection of consumer rights. Though it appears to be consumer-friendly and also includes current trends in e-commerce, but its proper implementation can only be seen by analyzing the extent of relief it offers to the consumer.

²⁷*Id.*, s.86